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# DECISION



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-221821 **DATE:** May 16, 1986  
**MATTER OF:** Automation Management Consultants, Inc.

## DIGEST:

1. Review of a contract award under section 8(a) of the Small Business Act is limited to determining whether applicable regulations have been followed and whether there has been fraud or bad faith on the part of government officials.
2. Protester fails to show that the selection of a section 8(a) contractor is in bad faith based on a proposed subcontractor's alleged breach of a previous government contract for the same work, where the subcontractor could not possibly have been in breach as it was not a party to the contract and therefore not in privity with the government.
3. Allegation that a proposed awardee's subcontractor improperly interfered with the protester's prior contract constitutes a private dispute for resolution through the courts if necessary and does not affect the validity of the current procurement.

Automation Management Consultants, Inc. (AMCI) protests the proposed selection under section 8(a) of the Small Business Act (Act), 15 U.S.C. § 637(a) (1982), of Tucker and Associates (TA) for a contract to process personnel records at the Naval Reserve Personnel Center in New Orleans, Louisiana. We dismiss the protest.

Section 8(a) of the Act authorizes the Small Business Administration (SBA) to enter into contracts with government agencies and to arrange for the performance of

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such contracts by awarding subcontracts to socially and economically disadvantaged small business concerns. The SBA and contracting agencies enjoy broad discretion in arriving at section 8(a) contracting arrangements, and our review of their actions therefore is limited to determining whether applicable regulations have been followed and whether there has been fraud or bad faith on the part of government officials. Inter Sys., Inc., B-220056.2, Jan. 23, 1986, 86-1 CPD ¶ 77.

AMCI, as prime contractor, and its subcontractor, Rehab Group, Inc. (RGI), performed the prior basic 3-year contract for these services. After the contract expired, AMCI received a 4-month extension while the Navy attempted to obtain a section 8(a) contractor. AMCI did not retain RGI for the extension, but contracted with Washington Data Systems, Inc. (WDSI) to provide the services RGI had provided. AMCI apparently believed that WDSI would be able to hire RGI's personnel, but WDSI was unable to do so. AMCI was unable to perform, and its contract was terminated for default. The Navy subsequently awarded a contract under section 8(a) to the SBA which proposed TA as the section 8(a) contractor. TA intends to use RGI as a subcontractor.

AMCI objects to the consideration of TA because RGI allegedly caused the default of AMCI's contract extension by paying its employees not to work, thereby preventing AMCI's subcontractor, WDSI, from hiring RGI personnel. AMCI argues that RGI violated business ethics by this action, and that RGI also violated a clause in AMCI's basic contract with the government requiring the contractor to give its best efforts and cooperation to a successor contractor in order to effect an orderly and efficient transition. AMCI contends that since RGI failed to perform the basic contract by cooperating with the successor contractor under the extension, or caused the extension not to be performed, any firm proposing to use RGI therefore must be considered nonresponsible.



The protester's allegations are not sufficient to show bad faith by government officials in selecting TA as a contractor. First, it is not possible that TA's proposed subcontractor, RGI, breached AMCI's prior basic contract with the Navy because RGI was not a party to the contract and therefore was not in privity with the government. See Eng'g and Professional Servs., B-219657 et al., Dec. 3, 1985, 85-2 CPD ¶ 621. Further, the allegation that RGI unethically or improperly interfered with AMCI's performance of the prior contract extension constitutes a

dispute between AMCI and RGI, and is for resolution by those private parties, through the courts if necessary; the allegation does not affect the validity of this procurement. See Information Sys. & Networks Corp., B-218642, July 3, 1985, 85-2 CPD ¶ 25.

Also, RGI's alleged actions are not such to require a determination of nonresponsibility based on a lack of integrity or business ethics. Section 8(a) of the Small Business Act authorizes the SBA to certify that it is competent and responsible to perform any specific government contract, and in selecting a subcontractor SBA certifies that the firm is responsible and competent to perform. See Bermite Div., Whittaker Corp., B-205434, Nov. 23, 1981, 81-2 CPD ¶ 423. Given that the alleged lack of integrity involves only a private dispute between the protester and RGI, we believe that SBA's determining TA competent to perform the proposed contract is not subject to legal objection.

AMCI also contends that the proposed contract with TA is invalid because the Navy contracting officer did not make an independent decision to terminate AMCI's contract and to award the proposed contract to TA. AMCI contends that the Executive Officer at the Navy's contracting activity made those decisions. The contract termination decision involves a matter of contract administration that we will not review under our Bid Protest Regulations, 4 C.F.R. § 21.3(f)(1) (1985). Further, the protester has made no showing that the decision to select TA was unauthorized. The protester has the burden of proof, and unsupported allegations do not meet that burden. See Davlin Paint Co., B-218413, July 12, 1985, 85-2 CPD ¶ 45.

We dismiss the protest.

  
 Ronald Berger  
Deputy Associate  
General Counsel